

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

Steven L. Johnson,)	
)	
Plaintiff,)	
)	Case No. 2:08-cv-15
v.)	
)	
)	
Harry M. Hoberman, Rachell Wallock,)	
Peter Welte, and Christen Thelen,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff Steven L. Johnson (“Johnson”) seeks injunctive relief to remedy an allegedly illegal and improper risk assessment. The court denied plaintiff’s motion for a temporary restraining order but held his motion for preliminary injunction in abeyance. Plaintiff alleges defendants Rachell Wallock (“Wallock”) and Christen Thelen (“Thelen”) conducted the allegedly illegal and defective risk assessments in connection with presentence investigations prepared in connection with the failure to register charges against plaintiff. In his factual statement, plaintiff contends that defendants violated his due process rights in performing these risk assessments. Plaintiff seeks an injunction to stop any risk assessment by the Department of Corrections and an order restoring plaintiff’s initial risk assessment--apparently the one prepared in connection with his pre-2004 sex offense conviction.

On September 23, 2008, the magistrate judge entered an Order to Show Cause (Doc. #39), directing plaintiff to show cause why he has failed to respond to defendant Wallock’s and

Thelen's Motion to Dismiss (Doc. #37) filed July 29, 2008. Johnson was advised that failure to respond on or before October 10, 2008, would result in a recommendation that defendants' Motion to Dismiss (Doc. #37) be deemed well taken and that this action be dismissed against Wallock and Thelen, with prejudice. Johnson failed to respond to the Order. On October 21, 2008, the magistrate judge entered a report and recommendation, recommending this action be dismissed as against defendants Wallock and Thelen. (Doc. #40). On November 13, 2008, the district judge adopted the recommendation and dismissed Wallock and Thelen from this action. (Doc. #41).

Johnson's claim for preliminary injunction seeks to remedy the allegedly illegal risk assessments completed by Wallock and Thelen. Both Wallock and Thelen have been dismissed from this case. The remaining defendants, Welte and Zimmer, are not responsible for the content of the risk assessment. Accordingly, the court cannot impose the requested injunctive relief against any defendant remaining in the case. Therefore, it is recommended plaintiff's motion for preliminary injunction be **DENIED**.

Pursuant to Local Rule 72.1(D)(3) any party may object to this report and recommendation on or before March 16, 2009.

Dated this 6th day of March, 2009.

/s/ Karen K. Klein
Karen K. Klein
United States Magistrate Judge